Detention Law Used Rarely

3/16/72

By Paul W. Valentine
Washington Post Staff Writer

Washington's year-old preventive dentention act, pushed by the Nixon administration as a key legal tool to keep dangerous criminals off the streets while they are awaiting trial, has hardly been used and, therefore, has had little impact on the crime rate here, an independent study shows.

Instead, most defendants eligible for preventive detention continue either to be held in prison by the traditional device of high money bond or to be released under various nonfinancial conditions set by a judge, according to the survey. It was conducted by the Georgetown Institute of Criminal Law and Procedure in conjunction with the Vera Institute of Justice in New York.

"The infrequent use of the (preventive dentention) statute has precluded any significant impact on pretrial crime, on pretrial detention and release rates, on subsequent phases of the criminal process or on the operations of the District's criminal courts in general," the study says.

All told, the controversial law was invoked by a prosecutor or judge 20 times in the first 10 months of its existence (February through November, 1971). During that same period, more than 6,000 felony cases passed through U.S. District Court and D.C. Superior Court.

Of the 20 detention cases, defendants in only 10 were actually ordered held (prosecutors withdrew their requests for detention in several cases), according to the study.

Of the 10 defendants held, five were ordered released on later judicial review, and the case of one was dismissed altogether when a grand jury refused to indict him, the study said.

The preventive detention act permits a judge to deny bail and impose pretrial incarceration of certain suspects

See DETAIN, A12, Col. 1

DETAIN, From A1

charged with felonies considered dangerous or violent such as armed robbery, rape, burglary and arson. If a suspect is ordered held after a hearing by the judge, the law requires that he be tried within 60 days or be released again.

Civil liberties attorneys have condemned the act as an unconstitutional infringement on the right to pretrail bail. Law-and-order hardliners say it is a legal and reasonable device to reduce the growing incidence of offenses committed by habitual criminals, especially those already on parole, probation or pretrial release in other cases.

A constitutional test of the act is now in the courts, but has not been finally adjudicated.

U.S. Attorney Harold H. Titus Jr., in response to inquiries by the Georgetown-Vera study team, acknowledged that the act has not been used frequently and gave these reasons:

•Since the act's constitutionality is still being litigated, prosecutors are instructed to invoke it sparingly.

•There is a "prosecutorial reluctance" to initiate detention hearings because often the government is required to reveal crucial elements of its case against the defendant in justifying its request for detention.

•The "continued availability and effectiveness of money bond" assures detention anyway without the formality of a preventive detention hearing.

•A decision of the D.C. Court of Appeals last May 11 requires the U.S. attorney's office to invoke a five-day hold provision for arrested probationers and parolees before it can apply the more severe 60-day preventive detention statute. The five-day hold permits the parole or probation board to examine the circumstances of the defendant's arrest and decide whether to revoke parole or probation and return the defendant to prison in that manner.